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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DONNA M. SMITH,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 14-cv-05189 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
19 Magistrate Judge and Consent Form, ECF No. 3; Consent to Proceed Before a United
20 States Magistrate Judge, ECF No. 4). This matter has been fully briefed (*see* ECF Nos.
21 12, 13, 14).

22 After considering and reviewing the record, the Court finds that the ALJ did not
23 err in his step two and step three findings. Similarly, the ALJ did not err in his residual
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1 functional capacity determination. Therefore, this matter is affirmed pursuant to sentence
2 four of 42 U.S.C. § 405(g).

3 BACKGROUND

4 Plaintiff, DONNA M. SMITH, was born in 1966 and was 36 years old on the
5 alleged date of disability onset of February 16, 2003 (*see* Tr. 196-97). Plaintiff has
6 completed two years of college (Tr. 70). Plaintiff has work experience as a human
7 resources assistant, collections assistant, and data entry operator (Tr. 231-34). She
8 believes she lost her last job due to her depression (Tr. 83).

9
10 According to the ALJ, plaintiff has at least the severe impairments of “obesity,
11 degenerative disc disease, migraines, and major depressive disorder (20 CFR
12 404.1520(c))” (Tr. 35).

13 At the time of the hearing, plaintiff was living with her husband and two children
14 (Tr. 66, 72).

15 PROCEDURAL HISTORY

16 Plaintiff’s application for disability insurance (“DIB”) benefits pursuant to 42
17 U.S.C. § 423 (Title II) of the Social Security Act was denied initially and following
18 reconsideration (*see* Tr. 119-29, 130-32). Plaintiff’s requested hearing was held before
19 Administrative Law Judge Scott R. Morris (“the ALJ”) on October 29, 2012 (*see* Tr. 57-
20 105). On November 28, 2012, the ALJ issued a written decision in which the ALJ
21 concluded that plaintiff was not disabled pursuant to the Social Security Act (*see* Tr. 30-
22 56).
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1 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or
 2 not the Commissioner erred in determining that plaintiff's chronic carpal tunnel
 3 syndrome was not a severe health impairment; (2) Whether or not the Commissioner
 4 erred in determining that plaintiff did not meet or equal any of the listed impairments in
 5 20 C.F.R. Part 404, subpart P, Appendix 1 §§ 1.04 and 12.04; and (3) Whether or not the
 6 Commissioner erred in determining plaintiff's residual functional capacity (*see* ECF No.
 7 12, p. 2).

8 STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
 10 denial of social security benefits if the ALJ's findings are based on legal error or not
 11 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
 12 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
 13 1999)).

14 DISCUSSION

15 (1) Whether or not the Commissioner erred in determining that plaintiff's
 16 chronic carpal tunnel syndrome was not a severe health impairment?

17 At step two of the sequential evaluation the ALJ found plaintiff to have the severe
 18 impairments of "obesity, degenerative disc disease, migraines, and major depressive
 19 disorder" (Tr. 35). The ALJ found plaintiff's other impairments, including her mild
 20 carpal tunnel syndrome to be not severe because they

21 have caused only transient and mild symptoms and limitations, are well controlled
 22 with treatment, did not persist for twelve continuous months, do not have greater
 23 than a minimal limitation on the claimant's physical or mental ability to perform
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1 basic work activities, or are otherwise not adequately supported by the medical
2 evidence of record

3 (Tr. 35-36). The ALJ went on to note that plaintiff's mild carpal tunnel syndrome
4 responded well to bracing treatments and that plaintiff's physical examinations and x-
5 rays were unremarkable. *Id.* Plaintiff argues the ALJ erred by failing to find plaintiff's
6 carpal tunnel syndrome to be a severe impairment at step two (ECF No. 12, pp. 5-6).

7 This Court disagrees.

8 Step-two of the administration's evaluation process requires the ALJ to determine
9 if the claimant "has a medically severe impairment or combination of impairments."
10 *Smolen v. Chater*, 80 F.3d 1273, 1289-90 (9th Cir. 1996) (citation omitted); 20 C.F.R. §§
11 404.1520(a)(4)(ii), 416.920(a)(4)(ii) (1996). The Administrative Law Judge "must
12 consider the combined effect of all of the claimant's impairments on her ability to
13 function, without regard to whether [or not] each alone was sufficiently severe." *Smolen*,
14 *supra*, 80 F.3d at 1290 (citations omitted). The step-two determination of whether or not
15 a disability is severe is merely a threshold determination, raising potentially only a
16 "prima facie case of a disability." *Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007)
17 (citing *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999)).

18
19 An impairment is "not severe" if it does not "significantly limit" the ability to
20 conduct basic work activities. 20 C.F.R. §§ 404.1521(a), 416.921(a). Basic work
21 activities are "abilities and aptitudes necessary to do most jobs," including, for example,
22 "walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
23 capacities for seeing, hearing and speaking; understanding, carrying out, and
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1 remembering simple instructions; use of judgment; responding appropriately to
2 supervision, co-workers and usual work situations; and dealing with changes in a routine
3 work setting.” 20 C.F.R. § 404.1521(b). “An impairment or combination of impairments
4 can be found ‘not severe’ only if the evidence establishes a slight abnormality that has
5 ‘no more than a minimal effect on an individual[’]s ability to work.’” *Smolen, supra*, 80
6 F.3d at 1290 (*quoting* Social Security Ruling “SSR” 85-28) (*citing Yuckert v. Bowen*, 841
7 F.2d 303, 306 (9th Cir. 1988)). The step-two analysis is “a *de minimis* screening device to
8 dispose of groundless claims,” when the disability evaluation process ends at step two.
9 *Smolen, supra*, 80 F.3d at 1290 (*citing Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)).

11 In arguing that plaintiff’s carpal tunnel syndrome was severe, plaintiff cited to
12 only one page of the medical record prior to plaintiff’s date last insured (ECF No. 12, pp.
13 5-6). The record contained a bullet point list of plaintiff’s medical problems one of
14 which was “joint pain, localized in the wrist.” (Tr. 623). The note provided no further
15 information about the severity of the pain or the functional limitations that resulted from
16 the pain. The only other medical evidence that plaintiff cited was a diagnosis of carpal
17 tunnel syndrome from July 26, 2012 (ECF No. 12, pp. 5-6 (*citing* Tr. 1329)). Not only is
18 this medical record dated four years after plaintiff’s date last insured, it also fails to
19 provide any information about the functional limitations caused by this impairment. The
20 plaintiff further cited to her own testimony as support of her argument. However, the
21 ALJ found this testimony to lack credibility, a finding plaintiff failed to challenge (Tr.
22 39). The ALJ did not err in finding plaintiff’s carpal tunnel syndrome to not be severe at
23 step two.
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2 (2) Whether or not the Commissioner erred in determining that plaintiff did not
3 meet or equal any of the listed impairments in 20 C.F.R. Part 404, subpart
4 P, Appendix 1 §§ 1.04 and 12.04?

5 At step three of the sequential evaluation the ALJ found plaintiff did not meet or
6 medically equal the severity of any of the listed impairments (Tr. 36; 20 C.F.R. pt. 404,
7 subpt. P, app. 1 (“the Listings”)). The ALJ found that the medical records failed to show
8 that plaintiff met listing 1.04 because there was no evidence of nerve root compression,
9 positive straight leg raise, spinal arachnoiditis, or pseudoclaudication (Tr. 36). The ALJ
10 also found that plaintiff did not meet listing 12.04 because she had no restriction in her
11 activities of daily living, mild difficulties with social functioning, moderate difficulties
12 with concentration, persistence or pace, and no episodes of decompensation (Tr. 37).
13 Plaintiff argues the ALJ erred in failing to find that plaintiff met or equaled listings 1.04
14 or 12.04 (ECF No. 12, pp. 6-11). This Court disagrees.

15 At step-three of the administrative process, if the administration finds that the
16 claimant has an impairment(s) that has lasted or can be expected to last for not less than
17 twelve months and is included in Appendix 1 of the Listings of Impairments, or is equal
18 to a listed impairment, the claimant will be considered disabled without considering age,
19 education and work experience. 20 C.F.R. § 404.1520(d). The claimant bears the
20 burden of proof regarding whether or not she “has an impairment that meets or equals the
21 criteria of an impairment listed” in 20 C.F.R. pt. 404, subpt. P, app. 1 (“the Listings”).
22 *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005), *as modified to render a published*
23 *opinion by 2005 U.S. App. LEXIS 3756* (9th Cir. 2005).
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1 A claimant must demonstrate that she medically equals each of the individual
2 criteria for the particular Listing by presenting “medical findings equal in severity to *all*
3 the criteria for the one most similar listed impairment.” *Kennedy v. Colvin*, 738 F.3d
4 1172, 1176 (9th Cir. 2013) (citing *Sullivan v. Zebley*, 493 U.S. 521, 531 (1990); 20
5 C.F.R. § 416.926(a)). A claimant cannot rely on overall functional impact, but must
6 demonstrate that the impairment equals each criterion in the Listing. *Id.*

7 While plaintiff argues that she meets listing 1.04A, she admits that the evidence
8 does not show positive straight leg raise testing, which is required to meet listing 1.04A
9 (ECF No. 12, p. 7; 20 C.F.R. pt. 404, subpt. P, app. 1 (“the Listings”)). Plaintiff then
10 argues the ALJ equals listing 1.04A (ECF No. 12, p. 7). However, plaintiff fails to cite to
11 any evidence, beyond the diagnosis of myofascial pain syndrome and cervical myofascial
12 pain, to support the conclusion that her impairments were equal in severity to listing
13 1.04A. *Id.* The ALJ did not err in determining that plaintiff did not meet or equal listing
14 1.04.
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16 Plaintiff also argues that the ALJ erred in failing to find plaintiff met listing 12.04
17 (ECF No. 12, pp. 7-11). Plaintiff’s argument amounts to a request for a more favorable
18 weighing of the evidence. However, it is not the job of the court to reweigh the evidence:
19 If the evidence “is susceptible to more than one rational interpretation,” including one
20 that supports the decision of the Commissioner, the Commissioner’s conclusion “must be
21 upheld.” *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan, supra*,
22 169 F.3d at 599, 601).
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1 Further, none of the evidence cited to by plaintiff would require the ALJ to find
2 that plaintiff had a listing level impairment. In fact, one of the records cited to shows
3 plaintiff's doctor advised her to remain off work for only one month, which does not
4 demonstrate plaintiff had a disabling impairment for the requisite twelve month duration
5 (Tr. 480). Plaintiff also pointed to her own testimony to support a finding of more severe
6 limitations in activities of daily living, social functioning, and concentration, persistence,
7 and pace. However, as stated previously, the ALJ found plaintiff to lack credibility, a
8 finding that was not challenged by plaintiff.
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10 In finding plaintiff to have no limitation in activities of daily living, the ALJ noted
11 that plaintiff was able to care for her children, perform household chores, cook meals and
12 go shopping (Tr. 37). In finding plaintiff to have mild restriction in social functioning,
13 the ALJ noted that plaintiff failed to report relationship difficulties to her counselors and
14 that the record showed improvement with treatment (*Id.*). Finally, in finding plaintiff to
15 have moderate restriction in concentration, persistence, and pace the ALJ noted the
16 record showed unremarkable mental status examinations and showed no deficits in
17 memory or concentration (*Id.*). The ALJ's findings at step three were supported by
18 substantial evidence and are not grounds for reversal.
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20 (3) Whether or not the Commissioner erred in determining plaintiff's residual
21 functional capacity ("RFC"),

22 Plaintiff argues the ALJ erred in his RFC finding by not including all of plaintiff's
23 functional limitations (ECF No. 12, pp. 11-12). However, plaintiff's argument is based
24 on an assumption that the ALJ committed error in evaluating the evidence of record. As

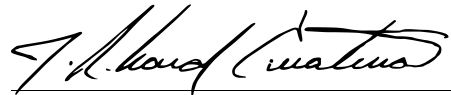
1 stated previously, plaintiff did not raise issue with the ALJ's assessment of plaintiff's
2 credibility, and plaintiff has failed to show that the ALJ committed any error in
3 evaluating the medical evidence. As such, plaintiff has failed to show that the ALJ erred
4 in his RFC finding.

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6 CONCLUSION

7 Based on these reasons and the relevant record, the Court **ORDERS** that this
8 matter be **AFFIRMED** pursuant to sentence four of 42 U.S.C. § 405(g).

9 **JUDGMENT** should be for **DEFENDANT** and the case should be closed.

10 Dated this 4th day of September, 2014.

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12 J. Richard Creatura
13 United States Magistrate Judge
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